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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DAN RICHARDSON et al., Plaintiffs and Respondents, v. HUNTINGTON PACIFIC BEACH HOUSE CONDOMINIUM ASSOCIATION, Defendant and Appellant.	G055884 (Super. Ct. No. 30-2014-00714844) O P I N I O N

Appeal from an order of the Superior Court of Orange County, James L. Crandall, Judge. Affirmed.

Bremer Whyte Brown & O'Meara, Kere K. Tickner, Jonathan P. Cothran; Greines, Martin, Stein & Richland, Robert A. Olson and Alana H. Rotter for Defendant and Appellant.

Hart King, William R. Hart, Robert M. Dickson, Rhonda H. Mehlman for Plaintiffs and Respondents.

Epsten Grinnell & Howell and Anne L. Rauch for Community Associations Institute as Amicus Curiae on behalf of Defendant and Appellant.

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This case arises out of a dispute between the homeowners association of a beachfront condominium complex and three owners of six units in that complex. Condominium owners Dan Richardson, Andrea Richardson, and Judith Carter (collectively Respondents) sought injunctive relief in the form of an order directing the Board of Directors of the Huntington Pacific Beach House Condominium Association (HOA) to comply with Civil Code section 4600.[1] The HOA challenges the trial court's order granting the requested relief. The court determined the HOA violated section 4600 by failing to subject owner Clint Stevenson's window to door conversion to an association wide vote, and required the HOA to undertake such a vote to validate or reject Stevenson's project. Finding no error, we affirm the order.

FACTS

The HOA manages a 106 unit condominium complex in Huntington Beach. A declaration of covenants, conditions, and restrictions (CC&Rs) establishes and governs the HOA. The complex is a common interest development and is subject to the Davis-Stirling Common Interest Development Act (Davis-Stirling Act). (§§ 4000, 4200.) Respondents and Stevenson own condominiums in the complex and are HOA members.

From approximately 2002 to 2013, the HOA's architectural review committee (ARC) allowed unit owners to add windows in the exterior walls of their units or to convert windows into doors. About 80 percent of the condominiums have been modified through this process, adding more than 90 windows and converting several windows to doors. Indeed, the Richardsons added nine windows to their two units and Carter added at least four windows to her four units. A former HOA president described

[1] All further statutory references are to the Civil Code.

the process as "rather routine." No association wide vote was held for any of the changes.

In 2013, the HOA instructed Stevenson to replace several windows in his unit. He then asked the ARC[2] to alter some doors and windows. Stevenson sought to swap a window and a door on the ocean facing side of his unit, enlarge a window opening on the courtyard facing side of his unit and to convert it to a door, and create a concrete path to the new courtyard facing door. Stevenson's stated reason for the construction was to provide a short-cut from his parking space to his unit. The ARC approved Stevenson's plans by a two to one vote in September 2013.

Ultimately, Respondents sued the HOA over its approval of Stevenson's project.[3] The complaint did not object to changes on the ocean-facing side of Stevenson's unit. It alleged the ARC's approval of changing the courtyard-facing window to a door was illegal under section 4600. Specifically, Respondents asserted Stevenson's changes took common area for his exclusive use, which required affirmative approval from the 67 percent of the HOA membership, not just approval by the ARC.

The trial court denied Respondents' preliminary injunction. Stevenson completed the project as approved by the ARC.

The parties stipulated to a trial based on briefs and written evidence, followed by an oral argument. The court ruled Stevenson's courtyard facing window to door conversion implicated section 4600 because the door was taller than the window it replaced and therefore occupied former wall space (i.e., from the bottom of the former window to the ground). The court determined exterior walls were common area and doors were exclusive use common area. It found converting any wall space to a door

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[2] We note Stevenson served as a member of the ARC. Respondents' allegations about improprieties in the ARC approval process are not at issue on appeal.

[3] Respondents initially sued Stevenson, but later voluntarily dismissed him before trial.

required approval of 67 percent of the HOA membership. It further determined an exception to section 4600 allowing transfer of a common area to a unit owner without association wide approval was inapplicable. (§ 4600, subd. (b)(3)(E).)

In its ruling, the court described Respondents' statutory reading, which it adopted, as "hypertechnical" and characterized the lawsuit as "nitpicky." It stated "from a practical standpoint, we know they're not going to get 67 percent on what they should order for lunch." The court went on to explain that while it "would love to be able to say this is a de minimis or reasonableness standard," it thought section 4600's literal language inexorably applied to the minor window enlargement/conversion here.

The trial court's ensuing written order found the HOA violated section 4600 by granting Stevenson permission to replace a window with "a larger exterior door . . . thereby taking a portion of the HOA Common Area and converting it to Exclusive Use" without obtaining approval of members owning 67 percent of the units. The court ordered the HOA "to comply with . . . [s]ection 4600" as to the window to door conversion.

The trial court ruled against Respondents on the remaining issues. Specifically, the court determined the HOA did not violate section 4600 by allowing Stevenson to replace vegetation with concrete to create a walkway to his new door. It also found the HOA did not violate section 4600 by permitting Stevenson to replace windows and to add an exterior light and unit number next to the new courtyard facing door. The court rejected Respondents' subsequent objections to the order.

The HOA timely appealed from the court's order granting an injunction as to the window to door conversion. Respondents did not cross-appeal from the denial of their injunctive relief request as to other aspects of Stevenson's project.

DISCUSSION

The HOA asserts various equitable defenses, claiming Respondents waived their rights to challenge Stevenson's project because they had previously added exterior

windows to their units. It also alleges section 4600 does not apply because changing Stevenson's window to a door did not convert common area to exclusive use. Finally, the HOA contends that even if section 4600 applies, association wide approval of the project was unnecessary because it fell within a statutory exception. The HOA's arguments lack merit.

I. *Unclean Hands and Other Equitable Defenses*

The HOA claims Respondents should be barred from suing the HOA for using the same process to approve Stevenson's project that allowed Respondents to create new windows in their units. We find the doctrine inapplicable.

The doctrine of unclean hands "demands that a plaintiff act fairly in the matter for which he seeks a remedy." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 (*Kendall-Jackson*).) A plaintiff who does not come to court with clean hands "will be denied relief, regardless of the merits of his claim." (*Ibid.*) Whether a plaintiff's prior conduct implicates the unclean hands bar "depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries. [Citations.]" (*Id.* at p. 979.)

In order to prevail on a defense of unclean hands, there must be evidence Respondents committed misconduct. (See *Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979.) The HOA alleges the misconduct committed by Respondents was "they have violated the same law that they are seeking to enforce" because they "punched holes through the exterior walls of their units to add new windows for their exclusive use, without the association wide approval that they now claim section 4600 requires." However, section 4600, subdivision (a), only applies to actions of the HOA board: "Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member." (§ 4600, subd. (a).) Based on the plain language of

section 4600, the only entity that may violate the statute is the HOA board. There is no evidence Respondents were members of the HOA board. The HOA admits Respondents followed the process established by the HOA for their changes. Because section 4600 prohibits an association's board from granting common area to a member for his or her exclusive use, Respondents could not have committed any statutory misconduct. Thus, the HOA fails to satisfy the second and third prongs of the *Kendall-Jackson* test for the application of the unclean hands defense.[4]

The HOA also asserts section 3515 applies to bar Respondents' claims as '"[h]e who consents to an act is not wronged by it."' It does not. The HOA contends because Respondents "punched new holes in exterior walls of their units with only the permission of the [ARC]. . . . They thereby consented to the [ARC] granting such permission without the need for [a] HOA membership-wide approval. . . ." Respondents followed the specified procedures for their projects. They sought and obtained permission for constructing their windows. Respondents did not consent to the act of adding a window in an exterior wall, but rather the ARC did by granting permission. Furthermore, the HOA cites no authority for the proposition a person can consent to a violation of law. (See §§ 1668, 3513.)

II. *Underlying Law*

This case involves the interaction between the two sets of texts. First, the Davis-Stirling Act, which provides general rules for the governance of condominium

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[4] The HOA maintains section 3524 applies to bar Respondents' claims because "[b]etween those who are equally in the right, or equally in the wrong, the law does not interpose." It also argues "[h]e who takes the benefit must bear the burden." (§ 3521.) As discussed above, Respondents were not "in the wrong" because section 4600 applies to actions by the HOA board. It was the HOA board's responsibility to ensure Respondents were burdened by section 4600. These equitable defenses are without merit.

associations. Second, the particular rules set forth in the HOA's CC&Rs. We examine each in turn.

The Davis-Stirling Act "consolidated the statutory law governing condominiums and other common interest developments." (*Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 81 (*Villa De Las Palmas*).) The Davis-Stirling Act defines '"exclusive use common area,"' in pertinent part, as "a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests." (§ 4145.) In other words, exclusive use common area is a subset of common area. Section 4145 identifies the following wide range of types of exclusive use common area: "shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest . . . ." (§ 4145, subd. (b).) Under the Davis-Stirling Act, "[u]nless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member." (§ 4600, subd. (a).)

The CC&Rs state the HOA is empowered "to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary and proper . . . ." CC&R section 1.22 defines "Exclusive Use Common Area" as portions of the development "over which exclusive or semi-exclusive easements are reserved for the use of and allocated to certain [o]wners, in accordance with . . . [s]ection 1351 [, subdivision] (i)."[5] CC&R section 1.22 identifies the following categories of exclusive use common area: "Exclusive Use Common Area . . . includ[es],

[5] Former section 1351, subdivision (i), was renumbered to section 4145, referenced above, which lists a range of exclusive use common area types.

without limitation, decks[,] storage areas, and carport and subterranean garage parking spaces . . . ." To the extent there is any conflict between the CC&Rs and the law, the law prevails. (§§ 4150, 4205.)

We review the trial court's interpretation of section 4600 and the CC&Rs based on undisputed facts de novo. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111, 1121.) To the extent the issues involve the court's resolution of disputed facts or inferences, we apply the substantial evidence standard of review. (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 43.)

III. *Section 4600 Applies*

The primary issue on appeal involves the trial court's determination there was a status change as to the approximately one and one-half by three foot portion of Stevenson's new door that used to be an exterior wall under his window. The court concluded the under window wall was common area, not exclusive common area, thereby triggering section 4600's requirement for a two-thirds vote of the HOA membership. "[T]he law says very clearly" that an affirmative vote is required before the HOA board can grant exclusive use of "any portion" of the common area, and the courts cannot "change the meaning of any portion." We find no error.

"Our primary task in construing a statute is to ascertain the intent of the Legislature. [Citation.] We make this determination by looking to the words used in the statute and giving them their plain meaning. [Citation.]" (*Villa De Las Palmas, supra*, 33 Cal.4th at p. 82.) "If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation.] 'Where the statute is clear, courts will not "interpret away clear language in favor of an ambiguity that does not exist." [Citation.]' [Citation.]" (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268.)

The HOA argues, without citation to any authority, the area of exterior wall under Stevenson's former window must be exclusive common area because it only served the interest of Stevenson's unit and was not shared with any other unit. The HOA contends the common thread in the examples of exclusive common area listed in CC&R section 1.22 and section 4145 is they all serve the interest of their adjacent unit. It goes on to contend, "there is no meaningful difference between the items listed in section 4145 and the small wall segment under Stevenson's former window. Just as a window, window box, door, doorstep, or stoop serves a single unit, so does the wall immediately under or around those things. If a window and window box are exclusive use, why not the wall space directly under the window?"

If the Legislature had intended for exclusive common area to apply to areas of exterior wall that appear to serve the interests of their adjacent unit, it would have done so. By the HOA's logic, the entire exterior wall bounding Stevenson's unit is exclusive common area. The exterior wall at issue is three stories tall and borders both Stevenson's and Carter's condominiums. In fact, Carter's patio is directly above and enclosed on one side by that exterior wall. The entire exterior wall is therefore common area, and the only portion that was for Stevenson's exclusive use was the original existing window. (See §§ 4145, 4185.)

For practical purposes, it makes sense that large areas, such as exterior walls, without readily determined boundaries, would be deemed common area. It would be difficult to track precisely where a portion of exterior wall stopped being common area and started as exclusive common area. Indeed, at trial the HOA's own expert appeared to agree the exterior wall was common area. "So although [HOA expert Adrian Adams] clearly admitted that walls are common area at the beginning part of his deposition, his testimony morphed into saying except those walls that aren't shared by anybody else and are solely exterior, they're exclusive use common areas. . . ." The court did not credit the expert's changing testimony.

What the Legislature did not do was give the HOA discretion to grant common area to the exclusive use of a single member because it believed the amount of common area granted was inconsequential. (§ 4600.) Section 4600 clearly states, "the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development *shall be required* before the board may grant exclusive use of *any portion of the common area* to a member." (§ 4600, emphasis added.) The HOA argues all that is involved is a small section of wall that no one was using. However, the statutory language is clear that the size of the grant does not matter. Section 4600 applies to any portion of the common area, and "[f]rom the earliest days of statehood we have interpreted 'any' to be broad, general and all embracing." (*California State Auto. Assn. Inter-Ins. Bureau v. Warwick* (1976) 17 Cal.3d 190, 195.)

Finally, the HOA contends the Legislature could not have meant what it said because this would lead to an absurd result in that "it is nearly impossible to get 67 [percent] of a condominium development's member to *vote* on anything." However, the Legislature squarely addressed this concern. Section 4600 provides an association may specify a different percentage required for approval of grants of common area. (§ 4600, subd. (a).) Thus, the HOA board may seek to amend the CC&Rs if it believes the 67 percent threshold is too high.

IV. *No Exception to Section 4600 Applies*

The Davis-Stirling Act contains numerous exceptions to the required vote of the membership. (§ 4600, subd. (b).) None are applicable here. The HOA contends the grant of exclusive use common area falls into the exception set out in section 4600, subdivision (b)(3)(E). Section 4600, subdivision (b)(3)(E), excepts from a membership vote a grant for exclusive use "[t]o transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association." The HOA fails to establish either prong of the exception.

First, the HOA contends replacing the window with a door transferred the maintenance obligation to Stevenson. It cites to paragraph 2.7 of the CC&Rs, which states, "However, no [o]wner shall be responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of his assigned Exclusive Use Common Area, so long as the painting, repair or replacement is not caused by the willful or negligent acts of the [o]wner or his [f]amily, tenants or guests." Importantly, the HOA fails to assert "management" of the area was transferred, which is also required under the exception. (§ 4600, subd. (b)(3)(E).) In any event, under paragraph 2.7 of the CC&Rs Stevenson was not required to repair, paint, or replace the exterior door at all, and the maintenance obligation remained with the HOA.

Next, the HOA contends the wall was "generally inaccessible" because "[t]he HOA membership at large did not have any *utilitarian* reason to touch the exterior wall below the window" and "[t]he under-window wall could not be used by the membership at large . . . ." However, as discussed above, the exterior wall at issue is three stories high and forms the building that bounds Stevenson's and Carter's units. The exterior wall is "of general use" to, at a minimum, Carter, part of the membership at large. Furthermore, the exterior walls within the condominium complex are "of general use to the membership at large" because they set the boundaries of each member's separate interest. (§ 4600, subd. (b)(3)(E).) Because the HOA fails to establish both prongs of the exception, it is inapplicable.

DISPOSITION

The order is affirmed. Amicus Curiae Community Associations Institute's request for judicial notice is denied.[6] Respondents are entitled to their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.

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[6] Community Associations Institute requests we take judicial notice of enrolled bill reports explaining the Legislature's intent behind section 4600. Because we determine the plain meaning of the statute was unambiguous, we decline to consider the underlying legislative history. In any event, a review of the materials sheds no light on the issue in this case.